

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 639 of 1996,

SPECIAL CRIMINAL APPLICATION NO. 640 OF 1996

AND

SPECIAL CRIMINAL APPLICATION NO.641 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GENERAL MANAGER

Versus

STATE OF GUJARAT & ANR.

Appearance in all matters:

MR BR GUPTA, Advocate for Petitioner.

Mr.S.R. Divetia, Addl.Standing Counsel for
respondent no.1.

Mr. Sunil C.Patel,Advocate for the respondent no.2.

CORAM : MR.JUSTICE S.M.SONI

Date of decision: 16/07/96

ORAL JUDGEMENT

In all these three matters identical facts and
common questions of law arise, hence, are disposed of by

this common order. For the purpose of this order, this Court will refer to the facts, if any, required to be stated of Spl.Criminal Application no.639 of 1996.

The petitioners have filed this application under Article 226 of the Constitution of India to quash the complaint filed by the respondent no.2 in all the matters. Complaint is filed under Section 3 and 7 of the Essential Commodities Act on the allegation that the petitioners have committed breach of Notification no.8/TDRO/8/2/95 dated 20-03-95. According to the complainant, in substance, it can be said that petitioners have committed an offence as they have not discharged their obligation as per the notification issued by the concerned department.

A letter dated 10th May, 1996 in the form of a complaint was addressed by the Assistant Director, Office of Textile Commissioner to Gomtipur Police Station who has taken cognizance and registered the offence being CR No.II 186/96 on 24th May,1996. In other two applications, the petitioner has not supplied the crime register numbers.

The petitioners want these complaints to be quashed on various grounds namely, (i) that they have applied for extension of exemption to defer the liability to discharge hankyarn obligation for a further period of two years as they were already granted such exemption for 1993-94 and 1994-95, (ii) that the Office of the Textile Commissioner, Bombay has informed the Chairman and Managing Director, NTC that they are advising their regional offices not to file FIRs for a period of one month upto 30th June,1996, whichever is later, by letter of 20th May,1996. Despite, the same, the First Information is registered on 24th May,1996, (iii) as the proceedings are pending before the B.I.F.R and the petitioner being declared a sick unit, legal proceedings, contracts etc. are required to be suspended in view of Section 22 of the Sick Industrial Companies(Special Provisions)Act,1985(" SICA " for short), (iv) the filing of the complaint and proceedings thereunder are in contravention of the direction of the Supreme Court in Applications nos. 3 and 4 of 1992 in Civil Appeal Nos.2058-59/1988 and (v) that in the facts and circumstances of the case in particular, when there is no manufacture/activity with the mill Company, there is no question of discharging the obligation under the notification issued under the Essential Commodities Act.

Before these contentions are dealt with, it is

necessary to deal with the preliminary objections raised by the learned Additional Standing Counsel for the Central Government and , that is, that this application is not maintainable in view of the judgment in the case of STATE OF H.P. VS. PIRTHI CHAND AND ANOTHER, reported in 1996 SCC(Cri.) 210. Learned Additional Standing Counsel has relied on the following observations in paragraph 13 which reads as under:

"When the remedy under Section 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since efficacious remedy under Section 482 of the Code is available. When the Court exercises its inherent power under Section 482, the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the Court. When Investigating Officer spends considerable time to collect the evidence and places the charge-sheet before the court, further action should not be short-circuited by resorting to exercise inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the offender as it is an offence against society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power. The accused involved in an economic offence destabilises the economy and causes grave incursion on the economic planning of the State. When the legislature entrusts the power to the police officer to prevent organised commission of the offence or offences involving moral turpitude or crimes of grave nature and are entrusted with power to investigate into the crime in intractable terrains and secretive manner in concert, greater circumspection and care and caution should be borne in mind by the High Court when it exercises its inherent power. Otherwise, the social order and security would be put in jeopardy and to grave risk. The accused will have field day in destabilising the economy of the State regulated under the relevant provisions."

There is a similar observation by the Supreme Court in the case of KARTAR SINGH VS. STATE OF PUNJAB, reported in (1994) 3 Supreme Court Cases 569. There the Supreme Court has also held that the High Court should not exercise powers under Article 226 when the other remedy is available. In my opinion, so far as the petitioner is concerned, he can raise the contentions raised before this Court before the learned Magistrate and pray for discharge. This apart, these contentions can be raised by challenge under Section 482 of the Code

of Criminal Procedure, 1973("code" for short). Therefore, this Court should be slow in exercising its powers under Article 226 of the Constitution of India if other statutory remedies are available to the petitioner. In this view of the matter, I am of the opinion, that this petition is not maintainable and is liable to be dismissed.

Despite the above conclusion, I am of the view that the contentions raised by the petitioners are required to be answered. So far as the first three contentions are concerned, they do not refer to criminal proceedings. Once an offence is committed, action is required to be taken atleast in the interest of society and in particular when it affects the supply of Essential Commodities to public. The same cannot be deferred, otherwise, the complaining party may suffer firstly because of provisions under Section 468 of the "Code" which refers to limitation and secondly, delay may damage the prosecution case. This apart, none of these contentions and the documents referred to, refer to the criminal proceedings, and therefore, the said contentions, in my opinion, are not available to the petitioners to quash criminal proceedings. So far as Section 22(1) of SICA is concerned, the same also refers to proceedings, contracts etc.and does not cover criminal proceedings. Learned Advocate Mr. Gupta, relying on a judgment in the case of MAHARASHTRA TUBES LTD. VS. STATE INDUSTRIAL AND INVESTMENT CORPORATION OF MAHARASHTRA LTD. AND ANOTHER, reported in (1993) 2 SCC 144 has tried to persuade this Court that the proceedings would include criminal proceedings also because any criminal action would cause distress against the properties and Section 22 refers to execution, distress or the like against any of the properties of the industrial Company. So far as Section 22 of SICA is concerned, it does not refer to criminal proceedings. In my opinion, when there is commission of offence then prosecution for that do causes distress but it is not against the properties and Section 22 is not attracted at all. So far as suspension of compliance with the obligation is concerned, the same was suspended upto 1994-95. On reading the complaint, the same is for the period of 1995-96 for which there is no suspension to discharge the obligation under the notification. Pendency of an application to further suspend the liability to discharge the obligation, does not automatically suspend the liability to discharge the obligation. Thus, this contention also does not survive. Hence, the petitions are liable to be dismissed and the same are hereby dismissed. Interim relief stands

vacated. Copy of this order be placed in other two
matters.

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